IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 24 of 2001

with

CIVIL APPLICATION No 3399 of 2001

with

CIVIL APPLICATION No 4367 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD.

Versus

VIMLADEVI SURESHKUMAR CHAUHAN

Appearance:

1. Appeal from Order No. 24 of 2001

MR BHARAT R PANDYA for Appellant No.

MR NB TIWARI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/02/2005

ORAL JUDGEMENT

1. The appellant has preferred this appeal from order being aggrieved by the order dated 02/01/2001 passed by the learned Chamber Judge, City Civil Court, Ahmedabad in order below exhs.5 & 6 in Civil Suit No.5818 of 2000, whereby the application was allowed on condition that the plaintiff deposits the two defaulted installments and on an Undertaking on affidavit that the plaintiff shall not commit any further defaults, the defendant was directed to hand over the suit vehicle within two days from the date of paying the amount of installment as also of the filing of the said Undertaking.

2. While admitting this appeal from order, this Court by judgment and order dated 22/01/2001 passed in Civil Application No.671 of 2001 had stayed the operation and implementation of the impugned order of the trial Court till the disposal of the appeal. Having gone through the documents placed on record, it transpires that the appellant has disposed of the suit vehicle "Mahindra Jeep", pursuant to which an application being Civil Application No.3399 of 2001 was moved by the respondent for appropriate directions with regard to the handing over of the possession of the said vehicle to the respondent.

3. I have heard learned counsel for the parties. Now, in view of the fact that the vehicle in question has been disposed of by the appellant, in the interest of justice, it would be appropriate if the amount which has been realized on disposing off the vehicle in question is deposited as Fixed Deposit with a nationalized Bank till the final outcome in the suit pending before the trial Court.

4. By order dated 13/08/2002 passed in Civil Application No.4367 of 2001, this Court had directed the respondent to deposit a sum of Rs.1,60,000.00 in this Court on or before 03/09/2002. The said amount has not been deposited so far.

5. Mr.B R Pandya learned advocate for the appellant has submitted that the appellant is ready to deposit the amount of Rs.1,60,000.00, referred to hereinabove, before the Registry of this Court and that he shall do the same on or before 9th February, 2005. He has further submitted that the appellant is also ready to deposit the amount of Rs.60,000.00 towards Interest @ 15 percent per

annum for the period from 13/08/2002 to till date, for the default committed by the appellant in not making payment as per this Court's order and that some time may be granted for depositing the same. He has submitted that the said amount i.e. Rs.2,20,000.00 (Rs.1,60,000.00 + Rs.60,000.00) may be kept subject to the final outcome in the suit before the trial Court.

6. In above view of the matter, ends of justice would be met, if the following directions are issued;

(i) The appellant is directed to deposit an amount of Rs.1,60,000.00 (Rupees One lac sixty thousand only) by way of Demand Draft with the Registry of this Court on or before 09/02/2005.

(ii) The appellant shall also deposit an amount of Rs.60,000.00 (Rupees Sixty thousand only) towards Interest as aforesaid with the Registry of this Court within a period of two weeks from today.

(iii) The Registry of this Court is directed to transfer the aforesaid amount of Rs.2,20,000.00 (Rupees Two lac twenty thousand only) (i.e Rs.1,60,000.00 + Rs.60,000.00) to the City Civil Court, Ahmedabad, which shall in turn, initially invest the said amount of Rs.2,20,000.00 (Rs.1,60,000 + Rs.60,000) in Fixed Deposit with a nationalized Bank for a period of one year and shall renew the same from time to time till the final outcome in the suit.

(iv) The quarterly interest accruing on the said Fixed Deposit shall be paid to the original plaintiff, respondent herein, till the final disposal of the suit.

(v) If the amount of Rs.60,000.00 as aforesaid is not deposited by the appellant within the stipulated period, it will be open for the respondent to move this Court with appropriate application for the withdrawal of the aforesaid amount of Rs.1,60,000.00.

(vi) The respondent shall be at liberty to move the trial Court with appropriate application for amendment in the suit for seeking relief against the appellant herein. If the respondent is desirous to prefer such an application before the trial Court, she shall prefer the same within

a period of one month from today.

(vii) The respondent shall also be at liberty to prefer an application before the trial Court for the grant of compensation instead of the custody of the suit vehicle in question.

7. Now, since the suit in question is of the year 2001 and the livelihood of the original plaintiff is at stake, if amendment application as aforesaid is preferred by the original plaintiff within the period stated hereinabove, the trial Court after hearing the said application expeditiously, is also directed to hear the suit in question and to dispose it of as expeditiously as possible and preferably within a period of one year from the date of decision of the aforesaid amendment application. It is made clear that this Court has not considered the application for the custody of the suit vehicle in question on merits.

8. The trial Court shall decide the application for amendment as well as the application for compensation preferred by the original plaintiff in accordance with law and without being influenced by the fact that this Court has granted permission to the original plaintiff, respondent herein, to prefer the aforesaid applications before it. The said liberty has been granted only with a view to protect the interest of the original plaintiff, respondent herein, since the suit vehicle in question has been disposed of after the filing of the suit before the trial Court.

9. With the above directions, this appeal from order stands disposed of. Liberty to apply in case of difficulty. Direct service permitted.

ORDER IN CIVIL APPLICATIONS

In view of the order passed in the appeal from order, no orders are necessary in the civil applications. Hence, they stand disposed of. Rule is made absolute to the aforesaid extent.

(K. S. Jhaveri, J.)

pravin/